

§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them:

- (1) To require, coerce, or attempt to coerce any dealer to accept delivery of any motor vehicle or vehicles, parts or accessories therefor, or any other commodities, which shall not have been ordered by that dealer, or to accept delivery of any motor vehicle or vehicles which have been equipped in a manner other than as specified by the dealer.
- (2) To require, coerce, or attempt to coerce any dealer to enter into any agreement with such manufacturer, factory branch, distributor, or distributor branch, or representative thereof, or do any other act unfair to such dealer, by threatening to cancel any franchise existing between such manufacturer, factory branch, distributor, distributor branch, or representative thereof, and such dealer;
- (3) **(See Editor's note for applicability)** Unfairly without due regard to the equities of the dealer, and without just provocation, to cancel the franchise of such dealer;
- (4) Notwithstanding the terms of any franchise agreement, to prevent or refuse to approve the sale or transfer of the ownership of a dealership by the sale of the business, stock transfer, or otherwise, or the transfer, sale or assignment of a dealer franchise, or a change in the executive management or principal operator of the dealership, change in use of an existing facility to provide for the sales or service of one or more additional line-makes of new motor vehicles, or relocation of the dealership to another site within the dealership's relevant market area, if the Commissioner has determined, if requested in writing by the dealer within 30 days after receipt of an objection to the proposed transfer, sale, assignment, relocation, or change, and after a hearing on the matter, that the failure to permit or honor the transfer, sale, assignment, relocation, or change is unreasonable under the circumstances. No franchise may be transferred, sold, assigned, relocated, or the executive management or principal operators changed, or the use of an existing facility changed, unless the franchisor has been given at least 30 days' prior written notice as to the proposed transferee's name and address, financial ability, and qualifications of the proposed transferee, a copy of the purchase agreement between the dealership and the proposed transferee, the identity and qualifications of the persons proposed to be involved in executive management or as principal operators, and the location and site plans of any proposed relocation or change in use of a dealership facility. The franchisor shall send the dealership and the proposed transferee notice of objection, by registered or certified mail, return receipt requested, to the proposed transfer, sale, assignment, relocation, or change within 30 days after receipt of notice from the dealer, as provided in this section. The notice of objection shall state in detail all factual and legal bases for the objection on the part of the franchisor to the proposed transfer, sale, assignment, relocation, or change that is specifically referenced in this subdivision. An objection to a proposed transfer, sale, assignment, relocation, or change in the executive management or principal operator of the dealership or change in the use of the facility may only be premised upon the factual and legal bases specifically referenced in this subdivision or G.S. 20-305(11), as it relates to change in the use of a facility. A manufacturer's notice of objection

which is based upon factual or legal issues that are not specifically referenced in this subdivision or G.S. 20-305(11) with respect to a change in the use of an existing facility as being issues upon which the Commissioner shall base his determination shall not be effective to preserve the franchisor's right to object to the proposed transfer sale, assignment, relocation, or change, provided the dealership or proposed transferee has submitted written notice, as required above, as to the proposed transferee's name and address, financial ability, and qualifications of the proposed transferee, a copy of the purchase agreement between the dealership and the proposed transferee, the identity and qualifications of the persons proposed to be involved in the executive management or as principal operators, and the location and site plans of any proposed relocation or change in the use of an existing facility. Failure by the franchisor to send notice of objection within 30 days shall constitute waiver by the franchisor of any right to object to the proposed transfer, sale, assignment, relocation, or change. If the franchisor requires additional information to complete its review, the franchisor shall notify the dealership within 15 days after receipt of the proposed transferee's name and address, financial ability, and qualifications, a copy of the purchase agreement between the dealership and the proposed transferee, the identity and qualifications of the persons proposed to be involved in executive management or as principal operators, and the location and site plans of any proposed relocation or change in use of the dealership facility. If the franchisor fails to request additional information from the dealer or proposed transferee within 15 days of receipt of this initial information, the 30-day time period within which the franchisor may provide notice of objection shall be deemed to run from the initial receipt date. Otherwise, the 30-day time period within which the franchisor may provide notice of objection shall run from the date the franchisor has received the supplemental information requested from the dealer or proposed transferee; provided, however, that failure by the franchisor to send notice of objection within 60 days of the franchisor's receipt of the initial information from the dealer shall constitute waiver by the franchisor of any right to object to the proposed transfer, sale, assignment, relocation, or change. With respect to a proposed transfer of ownership, sale, or assignment, the sole issue for determination by the Commissioner and the sole issue upon which the Commissioner shall hear or consider evidence is whether, by reason of lack of good moral character, lack of general business experience, or lack of financial ability, the proposed transferee is unfit to own the dealership. For purposes of this subdivision, the refusal by the manufacturer to accept a proposed transferee who is of good moral character and who otherwise meets the written, reasonable, and uniformly applied business experience and financial requirements, if any, required by the manufacturer of owners of its franchised automobile dealerships is presumed to demonstrate the manufacturer's failure to prove that the proposed transferee is unfit to own the dealership. With respect to a proposed change in the executive management or principal operator of the dealership, the sole issue for determination by the Commissioner and the sole issue on which the Commissioner shall hear or consider evidence shall be whether, by reason of lack of training, lack of prior experience, poor past performance, or poor character, the proposed candidate for a position within the executive management or as principal operator of the dealership is unfit for the position. For purposes of this subdivision, the refusal

by the manufacturer to accept a proposed candidate for executive management or as principal operator who is of good moral character and who otherwise meets the written, reasonable, and uniformly applied standards or qualifications, if any, of the manufacturer relating to the business experience and prior performance of executive management required by the manufacturers of its dealers is presumed to demonstrate the manufacturer's failure to prove the proposed candidate for executive management or as principal operator is unfit to serve the capacity. With respect to a proposed change in use of a dealership facility to provide for the sales or service of one or more additional line-makes of new motor vehicles, the sole issue for determination by the Commissioner is whether the new motor vehicle dealer has a reasonable line of credit for each make or line of motor vehicle and remains in compliance with any reasonable capital standards and facilities requirements of the manufacturer or distributor. The reasonable facilities requirements of the manufacturer or distributor shall not include any requirement that a new motor vehicle dealer establish or maintain exclusive facilities, personnel, or display space. With respect to a proposed relocation or other proposed change, the issue for determination by the Commissioner is whether the proposed relocation or other change is unreasonable under the circumstances. For purposes of this subdivision, the refusal by the manufacturer to agree to a proposed relocation which meets the written, reasonable, and uniformly applied standards or criteria, if any, of the manufacturer relating to dealer relocations is presumed to demonstrate that the manufacturer's failure to prove the proposed relocation is unreasonable under the circumstances. The manufacturer shall have the burden of proof before the Commissioner under this subdivision. It is unlawful for a manufacturer to, in any way, condition its approval of a proposed transfer, sale, assignment, change in the dealer's executive management, principal operator, or appointment of a designated successor, on the existing or proposed dealer's willingness to construct a new facility, renovate the existing facility, acquire or refrain from acquiring one or more line-makes of vehicles, separate or divest one or more line-makes of vehicle, or establish or maintain exclusive facilities, personnel, or display space. It is unlawful for a manufacturer to, in any way, condition its approval of a proposed relocation on the existing or proposed dealer's willingness to acquire or refrain from acquiring one or more line-makes of vehicles, separate or divest one or more line-makes of vehicle, or establish or maintain exclusive facilities, personnel, or display space. The opinion or determination of a franchisor that the continued existence of one of its franchised dealers situated in this State is not viable, or that the dealer holds or fails to hold licensing rights for the sale of other line-makes of vehicles in a manner consistent with the franchisor's existing or future distribution or marketing plans, shall not constitute a lawful basis for the franchisor to fail or refuse to approve a dealer's proposed change in use of a dealership facility or relocation: provided, however, that nothing contained in this subdivision shall be deemed to prevent or prohibit a franchisor from failing to approve a dealer's proposed relocation on grounds that the specific site or facility proposed by the dealer is otherwise unreasonable under the circumstances. Approval of a relocation pursuant to this subdivision shall not in itself constitute the franchisor's representation or assurance of the dealer's viability at that location.

- (5) To enter into a franchise establishing an additional new motor vehicle dealer or relocating an existing new motor vehicle dealer into a relevant market area where the same line make is then represented without first notifying in writing the Commissioner and each new motor vehicle dealer in that line make in the relevant market area of the intention to establish an additional dealer or to relocate an existing dealer within or into that market area. Within 30 days of receiving such notice or within 30 days after the end of any appeal procedure provided by the manufacturer, any new motor vehicle dealer may file with the Commissioner a protest to the establishing or relocating of the new motor vehicle dealer. When a protest is filed, the Commissioner shall promptly inform the manufacturer that a timely protest has been filed, and that the manufacturer shall not establish or relocate the proposed new motor vehicle dealer until the Commissioner has held a hearing and has determined that there is good cause for permitting the addition or relocation of such new motor vehicle dealer.
- a. This section does not apply:
1. To the relocation of an existing new motor vehicle dealer within that dealer's relevant market area, provided that the relocation not be at a site within 10 miles of a licensed new motor vehicle dealer for the same line make of motor vehicle. If this sub-subdivision is applicable, only dealers trading in the same line-make of vehicle that are located within the 10-mile radius shall be entitled to notice from the manufacturer and have the protest rights afforded under this section.
 2. If the proposed additional new motor vehicle dealer is to be established at or within two miles of a location at which a former licensed new motor vehicle dealer for the same line make of new motor vehicle had ceased operating within the previous two years.
 3. To the relocation of an existing new motor vehicle dealer within two miles of the existing site of the new motor vehicle dealership if the franchise has been operating on a regular basis from the existing site for a minimum of three years immediately preceding the relocation.
 4. To the relocation of an existing new motor vehicle dealer if the proposed site of the relocated new motor vehicle dealership is further away from all other new motor vehicle dealers of the same line make in that relevant market area.
 5. Repealed by Session Laws 2008-156, s. 3, effective August 3, 2008.
- b. In determining whether good cause has been established for not entering into or relocating an additional new motor vehicle dealer for the same line make, the Commissioner shall take into consideration the existing circumstances, including, but not limited to:
1. The permanency of the investment of both the existing and proposed additional new motor vehicle dealers;
 2. Growth or decline in population, density of population, and new car registrations in the relevant market area;
 3. Effect on the consuming public in the relevant market area;

4. Whether it is injurious or beneficial to the public welfare for an additional new motor vehicle dealer to be established;
 5. Whether the new motor vehicle dealers of the same line make in that relevant market area are providing adequate competition and convenient customer care for the motor vehicles of the same line make in the market area which shall include the adequacy of motor vehicle sales and service facilities, equipment, supply of motor vehicle parts, and qualified service personnel;
 6. Whether the establishment of an additional new motor vehicle dealer or relocation of an existing new motor vehicle dealer in the relevant market area would increase competition in a manner such as to be in the long-term public interest; and
 7. The effect on the relocating dealer of a denial of its relocation into the relevant market area.
- c. The Commissioner shall try to conduct the hearing and render his final determination if possible, within 180 days after a protest is filed.
 - d. Any parties to a hearing by the Commissioner concerning the establishment or relocating of a new motor vehicle dealer shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.
 - e. In a hearing involving a proposed additional dealership, the manufacturer or distributor has the burden of proof under this section. In a proceeding involving the relocation of an existing dealership, the dealer seeking to relocate has the burden of proof under this section.
 - f. If the Commissioner determines, following a hearing, that good cause exists for permitting the proposed additional or relocated motor vehicle dealership, the dealer seeking the proposed additional or relocated motor vehicle dealership must, within two years, obtain a license from the Commissioner for the sale of vehicles at the relevant site, and actually commence operations at the site selling new motor vehicles of all line makes, as permitted by the Commissioner. Failure to obtain a permit and commence sales within two years shall constitute waiver by the dealer of the dealer's right to the additional or relocated dealership, requiring renotification, a new hearing, and a new determination as provided in this section. If the Commissioner fails to determine that good cause exists for permitting the proposed additional or relocated motor vehicle dealership, the manufacturer seeking the proposed additional dealership or dealer seeking to relocate may not again provide notice of its intention or otherwise attempt to establish an additional dealership or relocate to any location within 10 miles of the site of the original proposed additional dealership or relocation site for a minimum of three years from the date of the Commissioner's determination.
 - g. **(See Editor's note for applicability)** For purposes of this subdivision, the addition, creation, or operation of a "satellite" or other facility, not physically part of or contiguous to an existing licensed new motor vehicle dealer, whether or not owned or operated by a person or other entity holding a franchise as defined by G.S. 20-286(8a), at which warranty service work authorized or reimbursed by a manufacturer is

performed or at which new motor vehicles are offered for sale to the public, shall be considered an additional new motor vehicle dealer requiring a showing of good cause, prior notification to existing new motor vehicle dealers of the same line make of vehicle within the relevant market area by the manufacturer and the opportunity for a hearing before the Commissioner as provided in this subdivision.

- (6) Notwithstanding the terms, provisions or conditions of any franchise or notwithstanding the terms or provisions of any waiver, to terminate, cancel or fail to renew any franchise with a licensed new motor vehicle dealer unless the manufacturer has satisfied the notice requirements of sub-subdivision c. of this subdivision and the Commissioner has determined, if requested in writing by the dealer within (i) the time period specified in G.S. 20-305(6)c.1.II., III., or IV., as applicable, or (ii) the effective date of the franchise termination specified or proposed by the manufacturer in the notice of termination, whichever period of time is longer, and after a hearing on the matter, that there is good cause for the termination, cancellation, or nonrenewal of the franchise and that the manufacturer has acted in good faith as defined in this act regarding the termination, cancellation or nonrenewal. When such a petition is made to the Commissioner by a dealer for determination as to the existence of good cause and good faith for the termination, cancellation or nonrenewal of a franchise, the Commissioner shall promptly inform the manufacturer that a timely petition has been filed, and the franchise in question shall continue in effect pending the Commissioner's decision. The Commissioner shall try to conduct the hearing and render a final determination within 180 days after a petition has been filed. If the termination, cancellation or nonrenewal is pursuant to G.S. 20-305(6)c.1.III. then the Commissioner shall give the proceeding priority consideration and shall try to render his final determination no later than 90 days after the petition has been filed. Any parties to a hearing by the Commissioner under this section shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes. Any determination of the Commissioner under this section finding that good cause exists for the nonrenewal, cancellation, or termination of any franchise shall automatically be stayed during any period that the affected dealer shall have the right to judicial review or appeal of the determination before the superior court or any other appellate court and during the pendency of any appeal; provided, however, that within 30 days of entry of the Commissioner's order, the affected dealer provide such security as the reviewing court, in its discretion, may deem appropriate for payment of such costs and damages as may be incurred or sustained by the manufacturer by reason of and during the pendency of the stay. Although the right of the affected dealer to such stay is automatic, the procedure for providing such security and for the award of damages, if any, to the manufacturer upon dissolution of the stay shall be in accordance with G.S. 1A-1, Rule 65(d) and (e). No such security provided by or on behalf of any affected dealer shall be forfeited or damages awarded against a dealer who obtains a stay under this subdivision in the event the ownership of the affected dealership is subsequently transferred, sold, or assigned to a third party in accordance with this subdivision or subdivision (4) of this section and the closing on such transfer, sale, or assignment occurs no later than 180 days after the date of

entry of the Commissioner's order. Furthermore, unless and until the termination, cancellation, or nonrenewal of a dealer's franchise shall finally become effective, in light of any stay or any order of the Commissioner determining that good cause exists for the termination, cancellation, or nonrenewal of a dealer's franchise as provided in this subdivision, a dealer who receives a notice of termination, cancellation, or nonrenewal from a manufacturer as provided in this subdivision shall continue to have the same rights to assign, sell, or transfer the franchise to a third party under the franchise and as permitted under G.S. 20-305(4) as if notice of the termination had not been given by the manufacturer. Any franchise under notice or threat of termination, cancellation, or nonrenewal by the manufacturer which is duly transferred in accordance with G.S. 20-305(4) shall not be subject to termination by reason of failure of performance or breaches of the franchise on the part of the transferor.

- a. Notwithstanding the terms, provisions or conditions of any franchise or the terms or provisions of any waiver, good cause shall exist for the purposes of a termination, cancellation or nonrenewal when:
 1. There is a failure by the new motor vehicle dealer to comply with a provision of the franchise which provision is both reasonable and of material significance to the franchise relationship provided that the dealer has been notified in writing of the failure within 180 days after the manufacturer first acquired knowledge of such failure;
 2. If the failure by the new motor vehicle dealer relates to the performance of the new motor vehicle dealer in sales or service, then good cause shall be defined as the failure of the new motor vehicle dealer to comply with reasonable performance criteria established by the manufacturer if the new motor vehicle dealer was apprised by the manufacturer in writing of the failure; and
 - I. The notification stated that notice was provided of failure of performance pursuant to this section;
 - II. The new motor vehicle dealer was afforded a reasonable opportunity, for a period of not less than 180 days, to comply with the criteria; and
 - III. The new motor vehicle dealer failed to demonstrate substantial progress towards compliance with the manufacturer's performance criteria during such period and the new motor vehicle dealer's failure was not primarily due to economic or market factors within the dealer's relevant market area which were beyond the dealer's control.
- b. The manufacturer shall have the burden of proof under this section.
- c. Notification of Termination, Cancellation and Nonrenewal. –
 1. Notwithstanding the terms, provisions or conditions of any franchise prior to the termination, cancellation or nonrenewal of any franchise, the manufacturer shall furnish notification of termination, cancellation or nonrenewal to the new motor vehicle dealer as follows:

- I. In the manner described in G.S. 20-305(6)c2 below;
and
 - II. Not less than 90 days prior to the effective date of such termination, cancellation or nonrenewal; or
 - III. Not less than 15 days prior to the effective date of such termination, cancellation or nonrenewal with respect to any of the following:
 - A. Insolvency of the new motor vehicle dealer, or filing of any petition by or against the new motor vehicle dealer under any bankruptcy or receivership law;
 - B. Failure of the new motor vehicle dealer to conduct its customary sales and service operations during its customary business hours for seven consecutive business days, except for acts of God or circumstances beyond the direct control of the new motor vehicle dealer;
 - C. Revocation of any license which the new motor vehicle dealer is required to have to operate a dealership;
 - D. Conviction of a felony involving moral turpitude, under the laws of this State or any other state, or territory, or the District of Columbia.
 - IV. Not less than 180 days prior to the effective date of such termination, cancellation, or nonrenewal which occurs as a result of any change in ownership, operation, or control of all or any part of the business of the manufacturer, factory branch, distributor, or distributor branch whether by sale or transfer of assets, corporate stock or other equity interest, assignment, merger, consolidation, combination, joint venture, redemption, operation of law or otherwise; or the termination, suspension, or cessation of a part or all of the business operations of the manufacturers, factory branch, distributor, or distributor branch; or discontinuance of the sale of the line-make or brand, or a change in distribution system by the manufacturer whether through a change in distributors or the manufacturer's decision to cease conducting business through a distributor altogether.
 - V. Unless the failure by the new motor vehicle dealer relates to the performance of the new motor vehicle dealer in sales or service, not more than one year after the manufacturer first acquired knowledge of the basic facts comprising the failure.
2. Notification under this section shall be in writing; shall be by certified mail or personally delivered to the new motor vehicle dealer; and shall contain:

- I. A statement of intention to terminate, cancel or not to renew the franchise;
 - II. A detailed statement of all of the material reasons for the termination, cancellation or nonrenewal; and
 - III. The date on which the termination, cancellation or nonrenewal takes effect.
 3. Notification provided in G.S. 20-305(6)c1II of 90 days prior to the effective date of such termination, cancellation or renewal may run concurrent with the 180 days designated in G.S. 20-305(6)a2II provided the notification is clearly designated by a separate written document mailed by certified mail or personally delivered to the new motor vehicle dealer.
- d. Payments.
 1. Notwithstanding the terms of any franchise, agreement, or waiver, upon the termination, nonrenewal or cancellation of any franchise by the manufacturer or distributor, the cessation of business or the termination, nonrenewal, or cancellation of any franchise by any new motor vehicle dealer located in this State, or upon any of the occurrences set forth in G.S. 20-305(6)c.1.IV., the manufacturer or distributor shall purchase from and compensate the new motor vehicle dealer for all of the following:
 - I. Each new and unsold motor vehicle within the new motor vehicle dealer's inventory that has been acquired within 24 months of the effective date of the termination from the manufacturer or distributor or another same line-make dealer in the ordinary course of business, and which has not been substantially altered or damaged to the prejudice of the manufacturer or distributor while in the new motor vehicle dealer's possession, and which has been driven less than 1,000 miles or, for purposes of a recreational vehicle motor home as defined in G.S. 20-4.01(32b)c., less than 1,500 miles following the original date of delivery to the dealer, and for which no certificate of title has been issued. For purposes of this sub-subdivision, the term "ordinary course of business" shall include inventory transfers of all new, same line-make vehicles between affiliated dealerships, or otherwise between dealerships having common or interrelated ownership, provided that the transfer is not intended solely for the purpose of benefiting from the termination assistance described in this sub-subdivision.
 - II. Unused, undamaged and unsold supplies and parts purchased from the manufacturer or distributor or sources approved by the manufacturer or distributor, at a price not to exceed the original manufacturer's price to the dealer, provided such supplies and parts are currently offered for sale by the manufacturer or

distributor in its current parts catalogs and are in salable condition.

- III. Equipment, signs, and furnishings that have not been substantially altered or damaged and that have been required by the manufacturer or distributor to be purchased by the new motor vehicle dealer from the manufacturer or distributor, or their approved sources.
 - IV. Special tools that have not been altered or damaged, normal wear and tear excepted, and that have been required by the manufacturer or distributor to be purchased by the new motor vehicle dealer from the manufacturer or distributor, or their approved sources within five years immediately preceding the termination, nonrenewal or cancellation of the franchise. The amount of compensation which shall be paid to the new motor vehicle dealer by the manufacturer or distributor shall be the net acquisition price if the item was acquired in the 12 months preceding the date of receipt of the dealer's request for compensation; seventy-five percent (75%) of the net acquisition price if the item was acquired between 13 and 24 months preceding the dealer's request for compensation; fifty percent (50%) of the net acquisition price if the item was acquired between 25 and 36 months preceding the dealer's request for compensation; twenty-five percent (25%) of the net acquisition price if the item was acquired between 37 and 60 months preceding the dealer's request for compensation.
2. The compensation provided above shall be paid by the manufacturer or distributor not later than 90 days after the manufacturer or distributor has received notice in writing from or on behalf of the new motor vehicle dealer specifying the elements of compensation requested by the dealer; provided the new motor vehicle dealer has, or can obtain, clear title to the inventory and has conveyed, or can convey, title and possession of the same to the manufacturer or distributor. Within 15 days after receipt of the dealer's written request for compensation, the manufacturer or distributor shall send the dealer detailed written instructions and forms required by the manufacturer or distributor to effectuate the receipt of the compensation requested by the dealer. The manufacturer or distributor shall be obligated to pay or reimburse the dealer for any transportation charges associated with the repurchase obligations of the manufacturer or distributor under this sub-subdivision. The manufacturer or distributor shall also compensate the dealer for any handling, packing, or similar payments contemplated in the franchise. In no event may the manufacturer or distributor charge the dealer any handling,

restocking, or other similar costs or fees associated with items repurchased by the manufacturer under this sub-subdivision.

3. In addition to the other payments set forth in this section, if a termination, cancellation, or nonrenewal is premised upon any of the occurrences set forth in G.S. 20-305(6)c.1.IV., then the manufacturer or distributor shall be liable to the dealer for an amount at least equivalent to the fair market value of the franchise on (i) the date the franchisor announces the action which results in termination, cancellation, or nonrenewal; or (ii) the date the action which results in termination, cancellation, or nonrenewal first became general knowledge; or (iii) the day 18 months prior to the date on which the notice of termination, cancellation, or nonrenewal is issued, whichever amount is higher. Payment is due not later than 90 days after the manufacturer or distributor has received notice in writing from, or on behalf of, the new motor vehicle dealer specifying the elements of compensation requested by the dealer. Any contract, agreement, or release entered into between any manufacturer and any dealer in which the dealer waives the dealer's right to receive monetary compensation in any sum or amount not less than the fair market value of the franchise as provided in this subdivision, including any contract, agreement, or release in which the dealer would accept the right to continue to offer and be compensated for service, parts, or both service and parts provided by the dealer in lieu of receiving all or a portion of the fair market value of the franchise, shall be voidable at the election of the dealer within 90 days of the effective date of the agreement. If the termination, cancellation, or nonrenewal is due to a manufacturer's change in distributors, but the line-make or brand in this State would continue to be sold through the new distributor, the manufacturer may avoid paying fair market value to the dealer if the new distributor or the manufacturer offers the dealer a franchise agreement with terms acceptable to the dealer.

- e. Dealership Facilities Assistance upon Termination, Cancellation or Nonrenewal.

In the event of the occurrence of any of the events specified in G.S. 20-305(6)d.1. above, except termination, cancellation or nonrenewal for license revocation, conviction of a crime involving moral turpitude, or fraud by a dealer-owner:

1. Subject to sub-sub-subdivision 3. of this sub-subdivision, if the new motor vehicle dealer is leasing the dealership facilities from a lessor other than the manufacturer or distributor, the manufacturer or distributor shall pay the new motor vehicle dealer a sum equivalent to the rent for the unexpired term of the lease or three year's rent, whichever is less, or such longer term as is provided in the franchise agreement between the dealer and manufacturer; except that, in the case of motorcycle dealerships, the manufacturer shall pay the new motor vehicle

- dealer the sum equivalent to the rent for the unexpired term of the lease or one year's rent, whichever is less, or such longer term as provided in the franchise agreement between the dealer and manufacturer; or
2. Subject to sub-sub-subdivision 3. of this sub-subdivision, if the new motor vehicle dealer owns the dealership facilities, the manufacturer or distributor shall pay the new motor vehicle dealer a sum equivalent to the reasonable rental value of the dealership facilities for three years, or for one year in the case of motorcycle dealerships.
 3. In order to be entitled to facilities assistance from the manufacturer or distributor, as provided in this sub-subdivision, the dealer, owner, or lessee, as the case may be, shall have the obligation to mitigate damages by listing the demised premises for lease or sublease with a licensed real estate agent within 30 days after the effective date of the termination of the franchise and thereafter by reasonably cooperating with said real estate agent in the performance of the agent's duties and responsibilities. In the event that the dealer, owner, or lessee is able to lease or sublease the demised premises, the dealer shall be obligated to pay the manufacturer the net revenue received from such mitigation up to the total amount of facilities assistance which the dealer has received from the manufacturer pursuant to sub-subdivisions 1. and 2. To the extent and for such uses and purposes as may be consistent with the terms of the lease, a manufacturer who pays facilities assistance to a dealer under this sub-subdivision shall be entitled to occupy and use the dealership facilities during the years for which the manufacturer shall have paid rent under sub-subdivisions 1. and 2.
 4. In the event the termination relates to fewer than all of the franchises operated by the dealer at a single location, the amount of facilities assistance which the manufacturer or distributor is required to pay the dealer under this sub-subdivision shall be based on the proportion of gross revenue received from the sale and lease of new vehicles by the dealer and from the dealer's parts and service operations during the three years immediately preceding the effective date of the termination (or any shorter period that the dealer may have held these franchises) of the line-makes being terminated, in relation to the gross revenue received from the sale and lease of all line-makes of new vehicles by the dealer and from the total of the dealer's and parts and service operations from this location during the same three-year period.
 5. The compensation required for facilities assistance under this sub-subdivision shall be paid by the manufacturer or distributor within 90 days after the manufacturer or distributor has received notice in writing from, or on behalf of, a new motor vehicle dealer specifying the elements of compensation requested by the dealer.

f. The provisions of sub-subdivision e. above shall not be applicable when the termination, nonrenewal, or cancellation of the franchise agreement by a new motor vehicle dealer is the result of the sale of assets or stock of the motor vehicle dealership. The provisions of sub-subdivisions d. and e. above shall not be applicable when the termination, nonrenewal, or cancellation of the franchise agreement is at the initiation of a new motor vehicle dealer of recreational vehicle motor homes, as defined in G.S. 20-4.01(32b)c., provided that at the time of the termination, nonrenewal, or cancellation, the recreational vehicle manufacturer or distributor has paid to the dealer all claims for warranty or recall work, including payments for labor, parts, and other expenses, which were submitted by the dealer 30 days or more prior to the date of termination, nonrenewal, or cancellation.

g. A franchise shall continue in full force and operation notwithstanding a change, in whole or in part, of an established plan or system of distribution of the motor vehicles offered for sale under the franchise. The appointment of a new manufacturer, factory branch, distributor, or distributor branch for motor vehicles offered for sale under the franchise agreement shall be deemed to be a change of an established plan or system of distribution.

Upon the occurrence of the change, the Division shall deny an application of a manufacturer, factory branch, distributor, or distributor branch for a license or license renewal unless the applicant for a license as a manufacturer, factory branch, distributor, or distributor branch offers to each motor vehicle dealer who is a party to a franchise for that line-make a new franchise agreement containing substantially the same provisions which were contained in the previous franchise agreement or files an affidavit with the Division acknowledging its undertaking to assume and fulfill the rights, duties, and obligations of its predecessor under the previous franchise agreement.

(7) Notwithstanding the terms of any contract or agreement, to prevent or refuse to honor the succession to a dealership, including the franchise, by a motor vehicle dealer's designated successor as provided for under this subsection.

a. Any owner of a new motor vehicle dealership may appoint by will, or any other written instrument, a designated successor to succeed in the respective ownership interest or interest as principal operator of the owner in the new motor vehicle dealership, including the franchise, upon the death or incapacity of the owner or principal operator. In order for succession to the position of principal operator to occur by operation of law in accordance with sub-subdivision c. below, the owner's choice of a successor must be approved by the dealer, in accordance with the dealer's bylaws, if applicable, either prior or subsequent to the death or incapacity of the existing principal operator.

b. Any objections by a manufacturer or distributor to an owner's appointment of a designated successor shall be asserted in accordance with the following procedure:

1. Within 30 days after receiving written notice of the identity of the owner's designated successor and general information as to the financial ability and qualifications of the designated

- successor, the franchisor shall send the owner and designated successor notice of objection, by registered or certified mail, return receipt requested, to the appointment of the designated successor. The notice of objection shall state in detail all facts which constitute the basis for the contention on the part of the manufacturer or distributor that good cause, as defined in this sub-subdivision below, exists for rejection of the designated successor. Failure by the franchisor to send notice of objection within 30 days and otherwise as provided in this sub-subdivision shall constitute waiver by the franchisor of any right to object to the appointment of the designated successor.
2. Any time within 30 days of receipt of the manufacturer's notice of objection the owner or the designated successor may file a request in writing with the Commissioner that the Commissioner hold an evidentiary hearing and determine whether good cause exists for rejection of the designated successor. When such a request is filed, the Commissioner shall promptly inform the affected manufacturer or distributor that a timely request has been filed.
 3. The Commissioner shall endeavor to hold the evidentiary hearing required under this sub-subdivision and render a determination within 180 days after receipt of the written request from the owner or designated successor. In determining whether good cause exists for rejection of the owner's appointed designated successor, the manufacturer or distributor has the burden of proving that the designated successor is a person who is not of good moral character or does not meet the franchisor's existing written and reasonable standards and, considering the volume of sales and service of the new motor vehicle dealer, uniformly applied minimum business experience standards in the market area.
 4. Any parties to a hearing by the Commissioner concerning whether good cause exists for the rejection of the dealer's designated successor shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.
 5. Nothing in this sub-subdivision shall preclude a manufacturer or distributor from, upon its receipt of written notice from an owner of the identity of the owner's designated successor, requiring that the designated successor promptly provide personal and financial data that is reasonably necessary to determine the financial ability and qualifications of the designated successor; provided, however, that such a request for additional information shall not delay any of the time periods or constraints contained herein.
 6. In the event death or incapacity of the owner or principal operator occurs prior to the time a manufacturer or distributor receives notice of the owner's appointment of a designated successor or before the Commissioner has rendered a determination as provided above, the existing franchise shall

remain in effect and the designated successor shall be deemed to have succeeded to all of the owner's or principal operator's rights and obligations in the dealership and under the franchise until a determination is made by the Commissioner or the rights of the parties have otherwise become fixed in accordance with this sub-subdivision.

- c. Except as otherwise provided in sub-subdivision d. of this subdivision, any designated successor of a deceased or incapacitated owner or principal operator of a new motor vehicle dealership appointed by such owner in substantial compliance with this section shall, by operation of law, succeed at the time of such death or incapacity to all of the rights and obligations of the owner or principal operator in the new motor vehicle dealership and under either the existing franchise or any other successor, renewal, or replacement franchise.
- d. Within 60 days after the death or incapacity of the owner or principal operator, a designated successor appointed in substantial compliance with this section shall give the affected manufacturer or distributor written notice of his or her succession to the position of owner or principal operator of the new motor vehicle dealership; provided, however, that the failure of the designated successor to give the manufacturer or distributor written notice as provided above within 60 days of the death or incapacity of the owner or principal operator shall not result in the waiver or termination of the designated successor's right to succeed to the ownership of the new motor vehicle dealership unless the manufacturer or distributor gives written notice of this provision to either the designated successor or the deceased or incapacitated owner's executor, administrator, guardian or other fiduciary by certified or registered mail, return receipt requested, and said written notice grants not less than 30 days time within which the designated successor may give the notice required hereunder, provided the designated successor or the deceased or incapacitated owner's executor, administrator, guardian or other fiduciary has given the manufacturer reasonable notice of death or incapacity. Within 30 days of receipt of the notice by the manufacturer or distributor from the designated successor provided in this sub-subdivision, the manufacturer or distributor may request that the designated successor complete the application forms generally utilized by the manufacturer or distributor to review the designated successor's qualifications to establish a successor dealership. Within 30 days of receipt of the completed forms, the manufacturer or distributor shall send a letter by certified or registered mail, return receipt requested, advising the designated successor of facts and circumstances which have changed since the manufacturer's or distributor's original approval of the designated successor, and which have caused the manufacturer or distributor to object to the designated successor. Upon receipt of such notice, the designated successor may either designate an alternative successor or may file a request for evidentiary hearing in accordance with the procedures provided in sub-subdivisions b.2. –5. of this subdivision. In any such hearing, the manufacturer or distributor shall be limited to facts and circumstances which did not exist at the time

- the designated successor was originally approved or evidence which was originally requested to be produced by the designated successor at the time of the original request and was fraudulent.
- e. The designated successor shall agree to be bound by all terms and conditions of the franchise in effect between the manufacturer or distributor and the owner at the time of the owner's or principal operator's death or incapacity, if so requested in writing by the manufacturer or distributor subsequent to the owner's or principal operator's death or incapacity.
 - f. This section does not preclude an owner of a new motor vehicle dealership from designating any person as his or her successor by written instrument filed with the manufacturer or distributor, and, in the event there is an inconsistency between the successor named in such written instrument and the designated successor otherwise appointed by the owner consistent with the provisions of this section, and that written instrument has not been revoked by the owner of the new motor vehicle dealership in writing to the manufacturer or distributor, then the written instrument filed with the manufacturer or distributor shall govern as to the appointment of the successor.
- (8) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to order or accept delivery of any new motor vehicle with special features, accessories or equipment not included in the list price of those motor vehicles as publicly advertised by the manufacturer or distributor.
 - (9) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to purchase nondiagnostic computer equipment or programs, to participate monetarily in an advertising campaign or contest, or to purchase unnecessary or unreasonable quantities of any promotional materials, training materials, training programs, showroom or other display decorations, materials, computer equipment or programs, or special tools at the expense of the new motor vehicle dealer, provided that nothing in this subsection shall preclude a manufacturer or distributor from including an unitemized uniform charge in the base price of the new motor vehicle charged to the dealer where such charge is attributable to advertising costs incurred or to be incurred by the manufacturer or distributor in the ordinary courses of its business.
 - (10) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to change the capital structure of the new motor vehicle dealer or the means by or through which the new motor vehicle dealer finances the operation of the dealership provided that the new motor vehicle dealer at all times meets any reasonable capital standards determined by the manufacturer in accordance with uniformly applied criteria; and also provided that no change in the capital structure shall cause a change in the principal management or have the effect of a sale of the franchise without the consent of the manufacturer or distributor, provided that said consent shall not be unreasonably withheld.
 - (11) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to refrain from participation in the management of, investment in, or the acquisition of any other line of new motor vehicle or related products; Provided, however, that this subsection does not apply unless the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicle, and the new motor vehicle dealer remains in compliance

with any reasonable capital standards and facilities requirements of the manufacturer. The reasonable facilities requirements shall not include any requirement that a new motor vehicle dealer establish or maintain exclusive facilities, personnel, or display space.

- (12) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to change location of the dealership, or to make any substantial alterations to the dealership premises or facilities, when to do so would be unreasonable, or without written assurance of a sufficient supply of new motor vehicles so as to justify such an expansion, in light of the current market and economic conditions.
- (13) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to prospectively assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability to be imposed by this law or to require any controversy between a new motor vehicle dealer and a manufacturer, distributor, or representative, to be referred to any person other than the duly constituted courts of the State or the United States of America, or to the Commissioner, if such referral would be binding upon the new motor vehicle dealer.
- (14) To delay, refuse, or fail to deliver motor vehicles or motor vehicle parts or accessories in reasonable quantities relative to the new motor vehicle dealer's facilities and sales potential in the new motor vehicle dealer's market area as determined in accordance with reasonably applied economic principles, or within a reasonable time, after receipt of an order from a dealer having a franchise for the retail sale of any new motor vehicle sold or distributed by the manufacturer or distributor, any new vehicle, parts or accessories to new vehicles as are covered by such franchise, and such vehicles, parts or accessories as are publicly advertised as being available or actually being delivered. The delivery to another dealer of a motor vehicle of the same model and similarly equipped as the vehicle ordered by a motor vehicle dealer who has not received delivery thereof, but who has placed his written order for the vehicle prior to the order of the dealer receiving the vehicle, shall be evidence of a delayed delivery of, or refusal to deliver, a new motor vehicle to a motor vehicle dealer within a reasonable time, without cause. Additionally, except as may be required by any consent decree of the Commissioner or other order of the Commissioner or court of competent jurisdiction, any sales objectives which a manufacturer, factory branch, distributor, or distributor branch establishes for any of its franchised dealers in this State must be reasonable, and every manufacturer, factory branch, distributor, or distributor branch must allocate its products within this State in a manner that does all of the following:
 - a. Provides each of its franchised dealers in this State an adequate supply of vehicles by series, product line, and model in a fair, reasonable, and equitable manner based on each dealer's historical selling pattern and reasonable sales standards as compared to other same line-make dealers in the State.
 - b. Allocates an adequate supply of vehicles to each of its dealers by series, product line, and model so as to allow the dealer to achieve any performance standards established by the manufacturer and distributor.
 - c. Is fair and equitable to all of its franchised dealers in this State.

- d. Makes available to each of its franchised dealers in this State a minimum of one of each vehicle series, model, or product line that the manufacturer makes available to any dealer in this State and advertises in the State as being available for purchase.
- e. Does not unfairly discriminate among its franchised dealers in its allocation process.

This subsection is not violated, however, if such failure is caused solely by the occurrence of temporary international, national, or regional product shortages resulting from natural disasters, unavailability of parts, labor strikes, product recalls, and other factors and events beyond the control of the manufacturer that temporarily reduce a manufacturer's product supply. The willful or malicious maintenance, creation, or alteration of a vehicle allocation process or formula by a manufacturer, factory branch, distributor, or distributor branch that is in any part designed or intended to force or coerce a dealer in this State to close or sell the dealer's franchise, cause the dealer financial distress, or to relocate, update, or renovate the dealer's existing dealership facility shall constitute an unfair and deceptive trade practice under G.S. 75-1.1.

- (15) To refuse to disclose to any new motor vehicle dealer, handling the same line make, the manner and mode of distribution of that line make within the State.
- (16) To award money, goods, services, or any other benefit to any new motor vehicle dealership employee, either directly or indirectly, unless such benefit is promptly accounted for, and transmitted to, or approved by, the new motor vehicle dealer.
- (17) To increase prices of new motor vehicles which the new motor vehicle dealer had ordered and which the manufacturer or distributor has accepted for immediate delivery for private retail consumers prior to the new motor vehicle dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer shall constitute evidence of each such order provided that the vehicle is in fact delivered to that customer. Price differences applicable to new model or series shall not be considered a price increase or price decrease. Price changes caused by either: (i) the addition to a new motor vehicle of required or optional equipment; or (ii) revaluation of the United States dollar, in the case of foreign-make vehicles or components; or (iii) an increase in transportation charges due to increased rates imposed by carriers; or (iv) new tariffs or duties imposed by the United States of America or any other governmental authority, shall not be subject to the provisions of this subsection.
- (18) To prevent or attempt to prevent a dealer from receiving fair and reasonable compensation for the value of the franchised business transferred in accordance with G.S. 20-305(4) above, or to prevent or attempt to prevent, through the exercise of any contractual right of first refusal or otherwise, a dealer located in this State from transferring the franchised business to such persons or other entities as the dealer shall designate in accordance with G.S. 20-305(4). The opinion or determination of a manufacturer that the existence or location of one of its franchised dealers situated in this State is not viable or is not consistent with the manufacturer's distribution or marketing forecast or plans shall not constitute a lawful basis for the manufacturer to fail or refuse to approve a dealer's proposed transfer of ownership submitted in accordance with G.S. 20-305(4), or "good cause" for the termination, cancellation, or nonrenewal of the franchise under

G.S. 20-305(6) or grounds for the objection to an owner's designated successor appointed pursuant to G.S. 20-305(7).

- (19) To offer any refunds or other types of inducements to any person for the purchase of new motor vehicles of a certain line make to be sold to the State or any political subdivision thereof without making the same offer available upon request to all other new motor vehicle dealers in the same line make within the State.
- (20) To release to any outside party, except under subpoena or as otherwise required by law or in an administrative, judicial or arbitration proceeding involving the manufacturer or new motor vehicle dealer, any confidential business, financial, or personal information which may be from time to time provided by the new motor vehicle dealer to the manufacturer, without the express written consent of the new motor vehicle dealer.
- (21) To deny any new motor vehicle dealer the right of free association with any other new motor vehicle dealer for any lawful purpose.
- (22) To unfairly discriminate among its new motor vehicle dealers with respect to warranty reimbursements or authority granted its new motor vehicle dealers to make warranty adjustments with retail customers.
- (23) To engage in any predatory practice against or unfairly compete with a new motor vehicle dealer located in this State.
- (24) To terminate any franchise solely because of the death or incapacity of an owner who is not listed in the franchise as one on whose expertise and abilities the manufacturer relied in the granting of the franchise.
- (25) To require, coerce, or attempt to coerce a new motor vehicle dealer in this State to either establish or maintain exclusive facilities, personnel, or display space.
- (26) To resort to or to use any false or misleading advertisement in the conducting of its business as a manufacturer or distributor in this State.
- (27) To knowingly make, either directly or through any agent or employee, any material statement which is false or misleading or conceal any material facts which induce any new motor vehicle dealer to enter into any agreement or franchise or to take any action which is materially prejudicial to that new motor vehicle dealer or his business.
- (28) To require, coerce, or attempt to coerce any new motor vehicle dealer to purchase or order any new motor vehicle as a precondition to purchasing, ordering, or receiving any other new motor vehicle or vehicles. Nothing herein shall prevent a manufacturer from requiring that a new motor vehicle dealer fairly represent and inventory the full line of current model year new motor vehicles which are covered by the franchise agreement, provided that such inventory representation requirements are not unreasonable under the circumstances.
- (29) To require, coerce, or attempt to coerce any new motor vehicle dealer to sell, transfer, or otherwise issue stock or other ownership interest in the dealership corporation to a general manager or any other person involved in the management of the dealership other than the dealer principal or dealer operator named in the franchise, unless the dealer principal or dealer operator is an absentee owner who is not involved in the operation of the dealership on a regular basis.
- (30) To vary the price charged to any of its franchised new motor vehicle dealers located in this State for new motor vehicles based on the dealer's purchase of

new facilities, supplies, tools, equipment, or other merchandise from the manufacturer, the dealer's relocation, remodeling, repair, or renovation of existing dealerships or construction of a new facility, the dealer's participation in training programs sponsored, endorsed, or recommended by the manufacturer, whether or not the dealer is dually with one or more other line makes of new motor vehicles, or the dealer's sales penetration. Except as provided in this subdivision, it shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them to vary the price charged to any of its franchised new motor vehicle dealers located in this State for new motor vehicles based on the dealer's sales volume, the dealer's level of sales or customer service satisfaction, the dealer's purchase of advertising materials, signage, nondiagnostic computer hardware or software, communications devices, or furnishings, or the dealer's participation in used motor vehicle inspection or certification programs sponsored or endorsed by the manufacturer.

The price of the vehicle, for purposes of this subdivision shall include the manufacturer's use of rebates, credits, or other consideration that has the effect of causing a variance in the price of new motor vehicles offered to its franchised dealers located in the State.

Notwithstanding the foregoing, nothing in this subdivision shall be deemed to preclude a manufacturer from establishing sales contests or promotions that provide or award dealers or consumers rebates or incentives; provided, however, that the manufacturer complies with all of the following conditions:

- a. With respect to manufacturer to consumer rebates and incentives, the manufacturer's criteria for determining eligibility shall:
 1. Permit all of the manufacturer's franchised new motor vehicle dealers in this State to offer the rebate or incentive; and
 2. Be uniformly applied and administered to all eligible consumers.
- b. With respect to manufacturer to dealer rebates and incentives, the rebate or incentive program shall:
 1. Be based solely on the dealer's actual or reasonably anticipated sales volume or on a uniform per vehicle sold or leased basis;
 2. Be uniformly available, applied, and administered to all of the manufacturer's franchised new motor vehicle dealers in this State; and
 3. Provide that any of the manufacturer's franchised new motor vehicle dealers in this State may, upon written request, obtain the method or formula used by the manufacturer in establishing the sales volumes for receiving the rebates or incentives and the specific calculations for determining the required sales volumes of the inquiring dealer and any of the manufacturer's other franchised new motor vehicle dealers located within 75 miles of the inquiring dealer.

Nothing contained in this subdivision shall prohibit a manufacturer from providing assistance or encouragement to a franchised dealer to remodel, renovate, recondition, or relocate the dealer's existing facilities, provided that

this assistance, encouragement, or rewards are not determined on a per vehicle basis.

It is unlawful for any manufacturer to charge or include the cost of any program or policy prohibited under this subdivision in the price of new motor vehicles that the manufacturer sells to its franchised dealers or purchasers located in this State.

In the event that as of October 1, 1999, a manufacturer was operating a program that varied the price charged to its franchised dealers in this State in a manner that would violate this subdivision, or had in effect a documented policy that had been conveyed to its franchised dealers in this State and that varied the price charged to its franchised dealers in this State in a manner that would violate this subdivision, it shall be lawful for that program or policy, including amendments to that program or policy that are consistent with the purpose and provisions of the existing program or policy, or a program or policy similar thereto implemented after October 1, 1999, to continue in effect as to the manufacturer's franchised dealers located in this State until June 30, 2022.

In the event that as of June 30, 2001, a manufacturer was operating a program that varied the price charged to its franchised dealers in this State in a manner that would violate this subdivision, or had in effect a documented policy that had been conveyed to its franchised dealers in this State and that varied the price charged to its franchised dealers in this State in a manner that would violate this subdivision, and the program or policy was implemented in this State subsequent to October 1, 1999, and prior to June 30, 2001, and provided that the program or policy is in compliance with this subdivision as it existed as of June 30, 2001, it shall be lawful for that program or policy, including amendments to that program or policy that comply with this subdivision as it existed as of June 30, 2001, to continue in effect as to the manufacturer's franchised dealers located in this State until June 30, 2022.

Any manufacturer shall be required to pay or otherwise compensate any franchise dealer who has earned the right to receive payment or other compensation under a program in accordance with the manufacturer's program or policy.

The provisions of this subdivision shall not be applicable to multiple or repeated sales of new motor vehicles made by a new motor vehicle dealer to a single purchaser under a bona fide fleet sales policy of a manufacturer, factory branch, distributor, or distributor branch.

- (31) Notwithstanding the terms of any contract, franchise, agreement, release, or waiver, to require that in any civil or administrative proceeding in which a new motor vehicle dealer asserts any claims, rights, or defenses arising under this Article or under the franchise, that the dealer or any nonprevailing party compensate the manufacturer or prevailing party for any court costs, attorneys' fees, or other expenses incurred in the litigation.
- (32) To require that any of its franchised new motor vehicle dealers located in this State pay any extra fee, purchase unreasonable or unnecessary quantities of advertising displays or other materials, or remodel, renovate, or recondition the dealers' existing facilities in order to receive any particular model or series of vehicles manufactured or distributed by the manufacturer for which the dealers have a valid franchise. Notwithstanding the foregoing, nothing contained in this subdivision shall be deemed to prohibit or prevent a

manufacturer from requiring that its franchised dealers located in this State purchase special tools or equipment, stock reasonable quantities of certain parts, or participate in training programs which are reasonably necessary for those dealers to sell or service any model or series of vehicles.

- (33) To fail to reimburse a dealer located in this State in full for the actual cost of providing a loaner vehicle to any customer who is having a vehicle serviced at the dealership if the provision of such a loaner vehicle is required by the manufacturer.
- (34) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to participate monetarily in any training program whose subject matter is not expressly limited to specific information necessary to sell or service the models of vehicles the dealer is authorized to sell or service under the dealer's franchise with that manufacturer. Examples of training programs with respect to which a manufacturer is prohibited from requiring the dealer's monetary participation include, but are not limited to, those which purport to teach morale-boosting employee motivation, teamwork, or general principles of customer relations. A manufacturer is further prohibited from requiring the personal attendance of an owner or dealer principal of any dealership located in this State at any meeting or training program at which it is reasonably possible for another member of the dealer's management to attend and later relate the subject matter of the meeting or training program to the dealership's owners or principal operator.
- (35) Notwithstanding the terms of any franchise, agreement, waiver or novation, to limit the number of franchises of the same line make of vehicle that any franchised motor vehicle dealer, including its parent(s), subsidiaries, and affiliates, if any, may own or operate or attach any restrictions or conditions on the ownership or operation of multiple franchises of the same line make of motor vehicle without making the same limitations, conditions, and restrictions applicable to all of its other franchisees.
- (36) With regard to any manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof that owns and operates a new motor vehicle dealership, directly or indirectly through any subsidiary or affiliated entity as provided in G.S. 20-305.2, to unreasonably discriminate against any other new motor vehicle dealer in the same line make in any matter governed by the motor vehicle franchise, including the sale or allocation of vehicles or other manufacturer or distributor products, or the execution of dealer programs for benefits.
- (37) Subdivisions (11) and (25) of this section shall not apply to any manufacturer, manufacturer branch, distributor, distributor branch, or any affiliate or subsidiary thereof of new motor vehicles which manufactures or distributes exclusively new motor vehicles with a gross weight rating of 8,500 pounds or more, provided that the following conditions are met: (i) the manufacturer has, as of November 1, 1996, an agreement in effect with at least three of its franchised dealers within the State, and which agreement was, in fact, being enforced by the manufacturer, requiring the dealers to maintain separate and exclusive facilities for the vehicles it manufactures or distributes; and (ii) there existed at least seven dealerships (locations) of that manufacturer within the State as of January 1, 1999.
- (38) Notwithstanding the terms, provisions, or conditions of any agreement, franchise, novation, waiver, or other written instrument, to assign or change a

franchised new motor vehicle dealer's area of responsibility under the franchise arbitrarily or without due regard to the present or projected future pattern of motor vehicle sales and registrations within the dealer's market and without having provided the affected dealer with written notice of the change in the dealer's area of responsibility and a detailed description of the change in writing by registered or certified mail, return receipt requested. A franchised new motor vehicle dealer who believes that a manufacturer, factory branch, distributor, or distributor branch with whom the dealer has entered into a franchise has assigned or changed the dealer's area of responsibility, is proposing to assign or change the dealer's area of responsibility arbitrarily or without due regard to the present or projected future pattern of motor vehicle sales and registrations within the dealer's market, or failed to provide the dealer with the notice required under this subdivision may file a petition within 60 days of receiving notice of a manufacturer, factory branch, distributor, or distributor branch's proposed assignment or change to the dealer's area of responsibility and have an evidentiary hearing before the Commissioner as provided in G.S. 20-301(b) contesting the franchised new motor vehicle dealer's assigned area of responsibility. In determining at the evidentiary hearing whether a manufacturer, factory branch, distributor, or distributor branch has assigned or changed the dealer's area of responsibility or is proposing to assign or change the dealer's area of responsibility arbitrarily or without due regard to the present or projected future pattern of motor vehicle sales and registrations within the dealer's market, the Commissioner may take into consideration the relevant circumstances, including, but not limited to:

- a. The investment of time, money, or other resources made for the purpose of developing the market for the vehicles of the same line-make in the existing or proposed area of responsibility by the petitioning dealer, other same line-make dealers who would be affected by the change in the area of responsibility, or by the manufacturer, factory branch, distributor, distributor branch, or any dealer or regional advertising association.
- b. The present and future projected traffic patterns and drive times between consumers and the same line-make franchised dealers of the affected manufacturer, factory branch, distributor, or distributor branch who are located within the market.
- c. The historical and projected future pattern of new vehicle sales and registrations of the affected manufacturer, factory branch, distributor, or distributor branch within various portions of the area of responsibility and within the market as a whole.
- d. The growth or decline in population, density of population, and new car registrations in the market.
- e. If the affected manufacturer, factory branch, distributor, or distributor branch has removed territory from a dealer's area of responsibility or is proposing to remove territory from a dealer's area of responsibility, the projected economic effects, if any, that these changes in the dealer's area of responsibility will have on the petitioning dealer, other same line-make dealers, the public, and the manufacturer, factory branch, distributor, or distributor branch.

- f. The projected effects that the changes in the petitioning dealer's area of responsibility that have been made or proposed by the affected manufacturer, manufacturer branch, distributor, or distributor branch will have on the consuming public within the market.
- g. The presence or absence of natural geographical obstacles or boundaries, such as mountains and rivers.
- h. The proximity of census tracts or other geographic units used by the affected manufacturer, factory branch, distributor, or distributor branch in determining same line-make dealers' respective areas of responsibility.
- i. The public interest, consumer welfare, and customer convenience.
- j. The reasonableness of the change or proposed change to the dealer's area of responsibility considering the benefits and harm to the petitioning dealer, other same line-make dealers, and the manufacturer, factory branch, distributor, or distributor branch.

At the evidentiary hearing before the Commissioner, the affected manufacturer, factory branch, distributor, or distributor branch shall have the burden of proving that all portions of its current or proposed area of responsibility for the petitioning franchised new motor vehicle dealer are reasonable in light of the present or projected future pattern of motor vehicle sales and registrations within the franchised new motor vehicle dealer's market. A policy or protocol of a manufacturer, factory branch, distributor, or distributor branch that determines a dealer's area of responsibility based solely on the proximity of census tracts or other geographic units to its franchised dealers and the existence of natural boundaries fails to satisfy the burden of proof on the affected manufacturer, factory branch, distributor, or distributor branch under this subdivision. Upon the filing of a petition before the Commissioner under this subdivision, any changes in the petitioning franchised new motor vehicle dealer's area of responsibility that have been proposed by the affected manufacturer, factory branch, distributor, or distributor branch shall be stayed during the pendency of the determination by the Commissioner. If a protest is or has been filed under G.S. 20-305(5) and the franchised new motor vehicle dealer's area of responsibility is included in the relevant market area under the protest, any protest filed under this subdivision shall be consolidated with that protest for hearing and joint disposition of all of the protests. Nothing in this subdivision shall apply to the determination of whether good cause exists for the establishment by a manufacturer, factory branch, distributor, or distributor branch of an additional new motor vehicle dealer or relocation of an existing new motor vehicle dealer, which shall be governed in accordance with the requirements and criteria contained in G.S. 20-305(5) and not this subdivision.

- (39) Notwithstanding the terms, provisions, or conditions of any agreement, franchise, novation, waiver, or other written instrument, to require, coerce, or attempt to coerce any of its franchised motor vehicle dealers in this State to purchase, lease, erect, or relocate one or more signs displaying the name of the manufacturer or franchised motor vehicle dealer upon unreasonable or onerous terms or conditions or if installation of the additional signage would violate local signage or zoning laws to which the franchised motor vehicle dealer is subject. Any term, provision, or condition of any agreement, franchise, waiver, novation, or any other written instrument which is in

violation of this subdivision shall be deemed null and void and without force and effect.

- (40) Notwithstanding the terms, provisions, or conditions of any agreement or franchise, to require any dealer to floor plan any of the dealer's inventory or finance the acquisition, construction, or renovation of any of the dealer's property or facilities by or through any financial source or sources designated by the manufacturer, factory branch, distributor, or distributor branch, including any financial source or sources that is or are directly or indirectly owned, operated, or controlled by the manufacturer, factory branch, distributor, or distributor branch.
- (41) Notwithstanding the terms, provisions, or conditions of any agreement or franchise, to use or consider the performance of any of its franchised new motor vehicle dealers located in this State relating to the sale of the manufacturer's new motor vehicles or ability to satisfy any minimum sales or market share quota or responsibility relating to the sale of the manufacturer's new motor vehicles in determining:
 - a. The dealer's eligibility to purchase program, certified, or other used motor vehicles from the manufacturer;
 - b. The volume, type, or model of program, certified, or other used motor vehicles the dealer shall be eligible to purchase from the manufacturer;
 - c. The price or prices of any program, certified, or other used motor vehicles that the dealer shall be eligible to purchase from the manufacturer; or
 - d. The availability or amount of any discount, credit, rebate, or sales incentive the dealer shall be eligible to receive from the manufacturer for the purchase of any program, certified, or other used motor vehicles offered for sale by the manufacturer.
- (42) Notwithstanding the terms, provisions, or conditions of any agreement or waiver, to directly or indirectly condition the awarding of a franchise to a prospective new motor vehicle dealer, the addition of a line make or franchise to an existing dealer, the renewal of a franchise of an existing dealer, the approval of the relocation of an existing dealer's facility, or the approval of the sale or transfer of the ownership of a franchise on the willingness of a dealer, proposed new dealer, or owner of an interest in the dealership facility to enter into a site control agreement or exclusive use agreement. For purposes of this subdivision, the terms "site control agreement" and "exclusive use agreement" include any agreement that has the effect of either: (i) requiring that the dealer establish or maintain exclusive dealership facilities; or (ii) restricting the ability of the dealer, or the ability of the dealer's lessor in the event the dealership facility is being leased, to transfer, sell, lease, or change the use of the dealership premises, whether by sublease, lease, collateral pledge of lease, right of first refusal to purchase or lease, option to purchase, option to lease, or other similar agreement, regardless of the parties to such agreement. Any provision contained in any agreement entered into on or after August 26, 2009, that is inconsistent with the provisions of this subdivision shall be voidable at the election of the affected dealer, prospective dealer, or owner of an interest in the dealership facility.
- (43) Notwithstanding the terms, provisions, or conditions of any agreement, franchise, novation, waiver, or other written instrument, to require, coerce, or attempt to coerce any of its franchised motor vehicle dealers in this State to

change the principal operator, general manager, or any other manager or supervisor employed by the dealer. Any term, provision, or condition of any agreement, franchise, waiver, novation, or any other written instrument that is inconsistent with this subdivision shall be deemed null and void and without force and effect.

- (44) Notwithstanding the terms, provisions, or conditions of any agreement or franchise, to require, coerce, or attempt to coerce any new motor vehicle dealer located in this State to refrain from displaying in the dealer's showroom or elsewhere within the dealership facility any sports-related honors, awards, photographs, displays, or other artifacts or memorabilia; provided, however, that such sports-related honors, awards, photographs, displays, or other artifacts or memorabilia (i) pertain to an owner, investor, or executive manager of the dealership; (ii) relate to professional sports; (iii) do not reference or advertise a competing brand of motor vehicles; and (iv) do not conceal or disparage any of the required branding elements that are part of the dealership facility.
- (45) Notwithstanding the terms, provisions, or conditions of any agreement or franchise, to discriminate against a new motor vehicle dealer located in this State for selling or offering for sale a service contract, debt cancellation agreement, maintenance agreement, or similar product not approved, endorsed, sponsored, or offered by the manufacturer, distributor, affiliate, or captive finance source. For purposes of this subdivision, discrimination includes any of the following:
 - a. Requiring or coercing a dealer to exclusively sell or offer for sale service contracts, debt cancellation agreements, or similar products approved, endorsed, sponsored, or offered by the manufacturer, distributor, affiliate, or captive finance source.
 - b. Taking or threatening to take any adverse action against a dealer (i) because the dealer sells or offers for sale any service contracts, debt cancellation agreements, maintenance agreements, or similar products that have not been approved, endorsed, sponsored, or offered by the manufacturer, distributor, affiliate, or captive finance source or (ii) because the dealer fails to sell or offer for sale service contracts, debt cancellation agreements, maintenance agreements, or similar products approved, endorsed, sponsored, or offered by the manufacturer, distributor, their affiliate, or captive finance source.
 - c. Measuring a dealer's performance under a franchise in any part based upon the dealer's sale of service contracts, debt cancellation agreements, or similar products approved, endorsed, sponsored, or offered by the manufacturer, distributor, affiliate, or captive finance source.
 - d. Requiring a dealer to exclusively promote the sale of service contracts, debt cancellation agreements, or similar products approved, endorsed, sponsored, or offered by the manufacturer, distributor, affiliate, or captive finance source.
 - e. Considering the dealer's sale of service contracts, debt cancellation agreements, or similar products approved, endorsed, sponsored, or offered by the manufacturer, distributor, affiliate, or captive finance source in determining any of the following:

1. The dealer's eligibility to purchase any vehicles, parts, or other products or services from the manufacturer or distributor.
2. The volume of vehicles or other parts or services the dealer shall be eligible to purchase from the manufacturer or distributor.
3. The price or prices of any vehicles, parts, or other products or services that the dealer shall be eligible to purchase from the manufacturer or distributor.
4. The availability or amount of any vehicle discount, credit, special pricing, rebate, or sales or service incentive the dealer shall be eligible to receive from the manufacturer, distributor, affiliate, or captive finance source in which the incentives are calculated or paid on a per-vehicle basis or any vehicle discount, credit, special pricing, or rebate that are calculated or paid on a per-vehicle basis.

For purposes of this subdivision, discrimination does not include, and nothing shall prohibit a manufacturer, distributor, affiliate, or captive finance source from, offering discounts, rebates, or other incentives to dealers who voluntarily sell or offer for sale service contracts, debt cancellation agreements, or similar products approved, endorsed, sponsored, or offered by the manufacturer, distributor, affiliate, or captive finance source; provided, however, that such discounts, rebates, or other incentives are based solely on the sales volume of the service contracts, debt cancellation agreements, or similar products sold by the dealer and do not provide vehicle sales or service incentives.

For purposes of this subdivision, a service contract provider or its representative shall not complete any sale or transaction of an extended service contract, extended maintenance plan, or similar product using contract forms that do not disclose the identity of the service contract provider.

- (46) To require, coerce, or attempt to coerce a dealer located in this State to purchase goods or services of any nature from a vendor selected, identified, or designated by a manufacturer, distributor, affiliate, or captive finance source when the dealer may obtain goods or services of substantially similar quality and design from a vendor selected by the dealer, provided the dealer obtains prior approval from the manufacturer, distributor, affiliate, or captive finance source, for the use of the dealer's selected vendor. Such approval by the manufacturer, distributor, affiliate, or captive finance source may not be unreasonably withheld. For purposes of this subdivision, the term "goods" does not include moveable displays, brochures, and promotional materials containing material subject to the intellectual property rights of a manufacturer or distributor, or special tools as reasonably required by the manufacturer, or parts to be used in repairs under warranty obligations of a manufacturer or distributor. If the manufacturer, distributor, affiliate, or captive finance source claims that a vendor chosen by the dealer cannot supply goods and services of substantially similar quality and design, the dealer may file a protest with the Commissioner. When a protest is filed, the Commissioner shall promptly inform the manufacturer, distributor, affiliate, or captive finance source that a protest has been filed. The Commissioner shall conduct a hearing on the merits of the protest within 90 days following the filing of a response to the protest. The manufacturer, distributor, affiliate, or

captive finance source shall bear the burden of proving that the goods or services chosen by the dealer are not of substantially similar quality and design to those required by the manufacturer, distributor, affiliate, or captive finance source.

- (47) To fail to provide to a dealer, if the goods or services to be supplied to the dealer by a vendor selected, identified, or designated by the manufacturer or distributor are signs or other franchisor image elements to be purchased or leased to the dealer, the right to purchase or lease the signs or other franchisor image elements of similar quality and design from a vendor selected by the dealer. This subdivision and subdivision (46) of this section shall not be construed to allow a dealer or vendor to violate directly or indirectly the intellectual property rights of the manufacturer or distributor, including, but not limited to, the manufacturer's or distributor's intellectual property rights in any trademarks or trade dress, or other intellectual property interests owned or controlled by the manufacturer or distributor, or to permit a dealer to erect or maintain signs that do not conform to the reasonable intellectual property right or trademark and trade dress usage guidelines of the manufacturer or distributor.
- (48) To unreasonably interfere with a dealer's independence in staffing the dealership by engaging in any of the following conduct: (i) requiring, coercing, or attempting to coerce a dealer located in this State to employ, appoint, or designate an individual to serve full-time or exclusively in any specific capacity, role, or job function at the dealership, other than the employment or appointment of a full-time general manager; (ii) requiring a dealer to employ, appoint, or designate an individual to serve full-time or exclusively in any specific capacity, role, or job function at the dealership, other than the employment or appointment of a full-time general manager, in order to participate in or qualify for any incentive program offered or sponsored by the manufacturer or distributor or to otherwise receive any discounts, credits, rebates, or incentives of any kind that are calculated or paid on a per-vehicle basis; or (iii) requiring that the dealer obtain the approval of the manufacturer or distributor prior to employing or appointing any individual in any capacity, role, or job function at the dealership, other than the employment or appointment of a full-time general manager. Except as expressly provided above, nothing contained in this subdivision shall be deemed to prevent or prohibit a manufacturer or distributor from requiring that a dealer employ a reasonable number of trained employees to sell and service the factory's vehicles.
- (49) A manufacturer or distributor may not charge a dealer more than a reasonable cost for any tool that the manufacturer or distributor sells to a dealer and designates as a special or essential tool. A manufacturer or distributor that collects tool fees as a convenience for the dealer and passes the payment through to a tool manufacturer or supplier which is not owned, operated, or controlled by the manufacturer, distributor, or affiliate shall not be considered to be selling the tool provided that the manufacturer or distributor's involvement does not increase the cost of the special tool or essential tool. Nothing in this subdivision shall prohibit a manufacturer or distributor from charging a reasonable nominal fee in addition to the cost of the special or essential tool that includes manufacturer or distributor handling costs. For any special or essential tool that the manufacturer or distributor sells to the dealer

at a price exceeding two hundred fifty dollars (\$250.00), the manufacturer or distributor shall disclose on an invoice or similar billing statement submitted to the dealer for the tool, the actual cost of the special or essential tool paid by the manufacturer or distributor.

- (50) To require, coerce, or attempt to coerce any new motor vehicle dealer located in this State to change location of its dealership, or to make any substantial alterations to its dealership premises or facilities, if the dealer (i) has changed the location of its dealership or made substantial alterations to its dealership premises or facilities within the preceding 10 years at a cost of more than two hundred fifty thousand dollars (\$250,000), indexed to the Consumer Price Index, over this 10-year period, and (ii) the change in location or alteration was made toward compliance with a facility initiative or facility program that was sponsored or supported by the manufacturer, factory branch, distributor, or distributor branch, with the approval of the manufacturer, factory branch, distributor, or distributor branch. For any dealer that did not change the location of its dealership or make substantial alterations to its dealership premises or facilities within the preceding 10 years at a cost of more than two hundred fifty thousand dollars (\$250,000), indexed to the Consumer Price Index, the dealer's obligation to change location of its dealership, or to make any substantial alteration to its dealership premises or facilities, at the request of a manufacturer, factory branch, distributor, or distributor branch, or to satisfy a requirement or condition of an incentive program sponsored by a manufacturer, factory branch, distributor, or distributor branch, shall be governed by the applicable provisions of subdivisions (4), (11), (12), (25), (30), (32), and (42) of this section. This section shall not apply to any facility or premises improvement or alteration that is voluntarily agreed to by the new motor vehicle dealer and for which the dealer receives facilities-related compensation from the manufacturer or distributor for the facility improvement or alteration equivalent to at least a majority of the cost incurred by the dealer for the facility improvement or alteration.
- (51) To establish, implement, or enforce criteria for measuring the sales or service performance of any of its franchised new motor vehicle dealers in this State for the purpose of cancelling, terminating or nonrenewing a franchise agreement which (i) are unfair, unreasonable, arbitrary, or inequitable; (ii) do not consider available relevant and material local, State, and regional criteria, data, and facts. Relevant and material criteria, data, or facts include those of motor vehicle dealerships of comparable size in comparable markets; and (iii) if such performance measurement criteria are based, in whole or in part, on a survey, such survey must be based on a statistically significant and valid random sample. In any proceeding under this subdivision, the applicable manufacturer or distributor shall bear the burden of proof (i) with regard to all issues raised in the proceeding and (ii) that the dealer performance measurements comply with all of the provisions hereof and are and have been implemented and enforced uniformly by the applicable manufacturer or distributor among its dealers in this State. In the event it is determined that the performance criteria employed by a manufacturer or distributor for measuring the sales, service, or customer satisfaction performance of any of its franchised motor vehicle dealers in this State for the purpose of cancelling, terminating or nonrenewing a franchise agreement are unfair, unreasonable, arbitrary, or inequitable, or that the performance criteria does not consider available local,

State, and regional criteria, data, and facts required in this subsection, or that the performance criteria have not been implemented and enforced uniformly by the applicable manufacturer or distributor among its dealers in this State, the performance criteria of the manufacturer or distributor may not constitute any part of the basis for a determination in any franchise-related decision pertaining to whether good cause exists for the termination of a dealer's franchise pursuant to G.S. 20-305(6). (1955, c. 1243, s. 21; 1973, c. 88, ss. 1, 2; 1983, c. 704, ss. 5-10; 1987, c. 827, s. 1; 1991, c. 510, ss. 2-4; 1993, c. 123, s. 1; c. 331, s. 2; 1995, c. 163, s. 13; c. 480, s. 3; 1997-319, s. 3; 1999-335, s. 2; 1999-336, s. 1; 2001-510, ss. 2, 6; 2003-113, ss. 2, 3, 4; 2005-409, s. 2; 2005-463, s. 2; 2007-513, ss. 2-4, 9, 12; 2008-156, s. 3; 2008-187, s. 50; 2009-338, ss. 1, 2, 5; 2009-496, s. 1; 2011-290, ss. 5-9; 2013-302, s. 7; 2014-58, s. 10(e), (f); 2015-209, ss. 2, 3, 4, 5; 2017-102, s. 5.2(b); 2017-148, s. 2; 2018-27, ss. 1, 4.)